

125 FERC ¶ 61,056
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

North American Electric Reliability
Corporation

Docket Nos. RR08-6-000
RR07-14-001

ORDER CONDITIONALLY ACCEPTING
2009 BUSINESS PLAN AND BUDGET OF THE
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION
AND ORDERING COMPLIANCE FILINGS

(Issued October 16, 2008)

1. On August 22, 2008, as corrected on August 31, 2008, the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization (ERO),¹ filed its 2009 Business Plan and Budget, as well as the 2009 business plans and budgets of each Regional Entity and of the Western Interconnection Regional Advisory Body (WIRAB).² As discussed below, the Commission conditionally accepts the business plans and budgets of NERC, the Regional Entities and WIRAB. The Commission, however, is concerned whether NERC's budget provides adequate funding for certain activities, and our acceptance of the NERC budget is conditioned on a compliance filing that provides further explanation regarding funding levels by NERC and a possible supplemental request for funding. NERC is authorized to issue billing

¹ See *North American Electric Reliability Corp.*, 116 FERC ¶ 61,062, *order on reh'g and compliance*, 117 FERC ¶ 61,126 (2006) (ERO Certification Order).

² NERC's business plan and budget combined with the Regional Entities' business plans and budgets are collectively referred to herein as NERC's "Application." The eight Regional Entities include: Texas Regional Entity (TRE), a Division of Electric Reliability Council of Texas, Inc. (ERCOT); Florida Reliability Coordinating Council (FRCC); Midwest Reliability Organization (MRO); Northeast Power Coordinating Council (NPCC); Reliability First Corporation (RFC); SERC Reliability Corporation (SERC); Western Electricity Coordinating Council (WECC); and Southwest Power Pool, Inc. (SPP Regional Entity).

invoices to fund the fiscal year 2009 operations of the Regional Entities, WIRAB, and itself.

2. In addition, the Commission accepts NERC's July 21, 2008 "reliability enhancement programs" compliance filing,³ and directs NERC to submit an update of its enhancement programs as part of its 2010 Business Plan and Budget filing.

I. Background

A. Regulatory History

3. Section 215 to the Federal Power Act (FPA) requires a Commission-certified ERO to develop mandatory and enforceable Reliability Standards, subject to Commission review and approval.⁴ Section 215(c)(2)(B) of the FPA provides that the ERO must have rules that "allocate equitably reasonable dues, fees, and other charges among end users for all activities under this section."⁵

4. On February 3, 2006, the Commission issued Order No. 672 to implement the requirements of section 215 of the FPA, which generally provides for Commission authorization of funding for "statutory" functions, i.e., those carried out pursuant to section 215 of the FPA.⁶ Among other things, Order No. 672 sets forth requirements for funding the ERO and the approval of an ERO business plan and budget.⁷ Moreover, the Commission's regulations require the ERO to file with the Commission the ERO's proposed annual budget for statutory and non-statutory activities 130 days before the beginning of its fiscal year.⁸ Further, the filing must contain the annual budgets of each Regional Entity for statutory and non-statutory activities and provide supporting

³ NERC, Compliance Filing, Docket No. RR07-14-001 (filed July 21, 2008) (responding to Commission order on filing of reliability enhancement programs).

⁴ 16 U.S.C. § 824o (2006).

⁵ *Id.* § 824o(c)(2)(B).

⁶ *Rules Concerning Certification of the Electric Reliability Organization; Procedures for the Establishment, Approval and Enforcement of Electric Reliability Standards*, Order No. 672, FERC Stats. & Regs. ¶ 31,204 (2006), *order on reh'g*, Order No. 672-A, FERC Stats. & Regs. ¶ 31,212 (2006).

⁷ Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 197; *see also* 18 C.F.R. § 39.4 (2008).

⁸ 18 C.F.R. § 39.4(b) (2008).

materials, including the ERO's and each Regional Entity's complete business plan and organization chart. The filing also must explain the proposed collection of all dues, fees, and charges, as well as the proposed expenditure of funds collected.

5. In an October 2006 order, the Commission conditionally accepted NERC's 2007 Business Plan and Budget for its first year of operation as the ERO.⁹ In that order, the Commission provided NERC guidance on future business plan and budget submissions. In an October 2007 order, the Commission conditionally accepted NERC's 2008 Business Plan and Budget and provided further guidance on future Business Plan and Budget submissions.¹⁰

B. NERC's 2009 ERO Business Plan and Budget Application

6. NERC's Application contains its proposed ERO business plan and budget for the year ending December 31, 2009, as well as the proposed business plans and budgets for the year ending December 31, 2009, for each of NERC's eight Regional Entities.¹¹ The WECC budget includes the funding request for WIRAB, a regional advisory body established pursuant to section 215(j) of the FPA.¹²

7. The total funding requirement for 2009, which is allocable to end users in the United States and for which NERC seeks Commission approval, is \$104,155,799. This amount includes \$28,668,409 for NERC funding; \$75,166,055 for Regional Entity funding; and \$321,336 for WIRAB funding.

8. NERC states that funding among end users will continue to be allocated in each country based on Net Energy for Load.¹³ According to NERC, one exception to this

⁹ *North American Electric Reliability Corp.*, 117 FERC ¶ 61,091 (2006), *order on reh'g*, 119 FERC ¶ 61,059 (2007) (2007 Budget Order).

¹⁰ *North American Electric Reliability Corp.*, 121 FERC ¶ 61,057 (2007) (2008 Budget Order).

¹¹ The Commission has approved delegation agreements between NERC and each of the eight Regional Entities. *North American Electric Reliability Corp.*, 119 FERC ¶ 61,060, *order on reh'g*, 120 FERC ¶ 61,260 (2007) (Delegation Agreement Order).

¹² 16 U.S.C. § 824o(j) (2006); *see also* *Governors of Arizona, California, Colorado, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming*, 116 FERC ¶ 61,061 (2006) (WIRAB Order).

¹³ Net Energy for Load values, commonly referred to as "NEL," are included in Appendix C of Attachment 2 of the Application.

method of collection would apply to the allocation of certain compliance and enforcement costs for jurisdictions outside the United States where a provincial government, for example, has designated an entity other than a Regional Entity to perform compliance and enforcement activities.¹⁴

9. The NERC Application includes a records retention policy. Further, NERC proffers a series of metrics that provide comparative information regarding the organization and business plans of the eight Regional Entities. NERC states that these metrics help to identify and explain differences that exist among Regional Entity activities and budgets; the metrics will provide a baseline to use in future years to make comparisons and develop trending analyses.

C. Reliability Enhancements Filing

10. Order No. 672 required the ERO to make a compliance filing no later than one year from the date of its certification proposing reliability enhancement programs that would improve Bulk-Power System reliability, along with a program implementation schedule.¹⁵ In response, NERC submitted a June 2007 compliance filing that identified activities that NERC believed contributed to the evolution of best practices. However, NERC stated that, given the start-up and transition of becoming the ERO, it was not then in a position to propose the design and implementation of a full array of specific reliability enhancement programs. The filing was accepted in a letter order subject to NERC filing a report in one year. On June 21, 2008, NERC submitted a second compliance filing, again stating that it is not in a position during this period of ERO start-up and transition to propose the designing and implementation of a full array of enhancement programs.

II. Notice and Responsive Pleadings

11. Notice of the 2009 Business Plan and Budget filing was published in the *Federal Register*, 73 Fed. Reg. 51,802 (2008), with interventions and protests due on or before September 11, 2008. WECC filed a timely motion to intervene and comment in support of the WECC regional budget. On October 1, 2008, WIRAB submitted its advice, recommending that the Commission accept NERC's and WECC's budgets.

¹⁴ See NERC Application, Attachment 5 (Policy on Allocation of Certain Compliance and Enforcement Costs).

¹⁵ Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 468.

12. Notice of NERC's enhancement programs compliance filing was published in the *Federal Register*, 73 Fed. Reg. 44,712 (2008), with interventions and protests due on or before August 20, 2008. No interventions or comments were filed.

III. Discussion

A. Preliminary Matters

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the timely, unopposed motion to intervene in the business plan and budget filing serves to make the entity that filed it a party to this proceeding.

B. NERC's Business Plan and Budget

1. NERC Application

14. NERC states that its 2009 business plan and budget were developed using guidance and directions set forth in a new strategic plan developed for the years 2008 to 2013. NERC explains that its principal activities in 2009 will continue to be the development, improvement, and adoption of Reliability Standards to ensure the reliable operation of the Bulk-Power System of North America and the monitoring, evaluating, and enforcement of compliance with those Reliability Standards by owners, operators, and users of the Bulk-Power System. NERC also states that its activities will include conducting assessments of the reliability and adequacy of the North American Bulk-Power System. NERC's 2009 Business Plan and Budget are based on the following major program elements: (1) Reliability Standards; (2) compliance enforcement and organization registration and certification; (3) reliability readiness evaluations and improvement; (4) training, education, and operator certification; (5) reliability assessment and performance analysis; (6) situational awareness and infrastructure security; and (7) administrative services.

15. For each of NERC's seven program areas, NERC describes the program, identifies the program's goals and objectives, and provides the number of full-time equivalent employees (FTE), as well as the amount budgeted for 2009. NERC also provides 2008 approved budget data and 2008 projected data for comparison.

16. NERC's proposed total budget for 2009 is \$34,447,620, an increase of \$7,915,626 or 29.8 percent over the 2008 budget proposal. NERC's proposed 2009 net funding requirement is \$31,925,048 (i.e., total budget less funding from other sources), of which \$28,668,409 is allocated to the United States. NERC proposes to change its cash reserves from 10 percent of the projected net ERO funding requirement to a \$2,500,000 working capital reserve target, which is approximately seven percent of the total budget funding. NERC explains that the proposed working capital reserve plus its \$4,000,000 revolving line of credit represents a reasonable and appropriate level of working capital in light of

the overall size of NERC's operations and budget. NERC states that its proposed total U.S. net funding requirement is equivalent to \$0.000007/kWh, based on the aggregate Net Energy for Load of the United States for 2007.

17. NERC proposes a 2009 staffing level of 100.5 FTEs, a decrease of one FTE over the 2008 budget staff level of 101.5 FTEs. This decrease is due to NERC's proposal to phase out the Reliability Readiness Evaluation and Improvement Program.

<u>Program</u>	<u>2009 Budget¹⁶</u>	<u>Direct FTEs</u>
Reliability Standards	\$ 5,665,032	14.0
Compliance Enforcement and Organization Registration and Certification	\$ 12,290,829	31.0
Reliability Readiness Evaluations and Improvement	\$ 485,429	0
Training, Education and Operator Certification	\$ 2,593,173	5.5
Reliability Assessment and Performance Analysis	\$ 6,519,959	13.5
Situation Awareness and Infrastructure Security	\$ 6,893,198	7.0
Total Budget	\$34,447,620	
Less other funding sources	(\$2,522,572)	
Net Funding Requirement	\$31,925,048	

2. Commission Determination

18. The Commission conditionally accepts the NERC business plan and budget and directs NERC to make compliance filings, as discussed below.¹⁷ We find that NERC's 2009 Business Plan provides sufficient detail for us to determine whether NERC intends to pursue appropriate activities. NERC's proposed categories of activities for 2009 are

¹⁶ The amounts projected for each program area are the total direct funding for Canada, Mexico, and United States. See NERC Application, Attachment 1, Table 1. In addition, the budgeted amount for each program includes the cost for administrative services, which is allocated to each program based on the number of FTEs budgeted for that program. The total budget includes \$1,129,352 in working cash reserves.

¹⁷ The Commission will review the status report on the changes from NERC's and the Regional Entities' budgets vis-à-vis actual reconciliations for 2007, as well as the audited financial statements for the 12 months ending December 31, 2007 (submitted in Attachments 17 and 18 of the Application), when the Commission reviews the July 2008 compliance filings in Docket No. RR07-16.

the same as those approved by the Commission for NERC's 2007 and 2008 budgets, except for the proposed discontinuance of the Reliability Readiness Evaluation and Improvement Program (discussed below), and reasonably fall within the types of activities the Commission considers to be covered by FPA section 215. NERC must file a true-up for the ERO and Regional Entities on or before April 1, 2010, with sufficient detail and explanation for the Commission to determine, by program area, the reasons for deviations from the budget and the impacts of those deviations.¹⁸

19. In reviewing the ERO business plan and budget (and the Regional Entity business plans and budgets) for 2009, the Commission examined, among other things, the statutory activities for consistency, the relative funding levels by activity among regions, areas of emphasis, differences from the 2008 Business Plans and Budgets, adequacy of staffing and funding, level of supporting staff and funding, mechanics of allocation and invoicing, types and levels of non-statutory activities, the system of accounting and record keeping, and supporting documentation for changes in emphasis, funding, and staffing. Based on this analysis, the Commission finds that NERC's Business Plan and Budget are reasonable, except for the specific matters discussed below.

20. Further, the Commission accepts as reasonable NERC's proposal to change its cash reserves to a \$2,500,000 working capital reserve target.

21. Notwithstanding NERC's 2009 budget increase over the 2008 budget, the Commission has concerns regarding whether NERC's 2009 budget provides sufficient funding for NERC to adequately perform specific functions, as discussed immediately below. Accordingly, while the Commission approves the NERC Business Plan and Budget, the Commission directs NERC to submit a compliance filing within 60 days of the date of this order addressing the specific concerns set forth below. The compliance filing should explain whether the current funding and staffing levels for these activities or programs are sufficient and, if not, propose an increase in funding so that the ERO can adequately perform the activity or program. Thus, while the Commission approves the NERC 2009 Business Plan and Budget, the approval is conditioned on the ERO's submission and Commission review of the compliance filing and a possible supplemental increase in the 2009 budget.

22. **Reliability Standards Program.** NERC proposes to decrease its FTEs from 15 to 14 for this program. Yet, NERC states that its three-year work plan contemplates over 35 Reliability Standards development projects (from 2008 through 2010).¹⁹ The Commission is concerned that the 14 FTEs NERC budgeted for the 2009 Reliability

¹⁸ See 2007 Budget Order, 121 FERC ¶ 61,057 at P 23.

¹⁹ 2009 Business Plan and Budget at 9.

Standards program may not allow NERC to meet its anticipated increase in Reliability Standards development projects and carry over other projects from the previous year.

23. In its advice to the Commission, WIRAB states that it is concerned with NERC's delays in approving and forwarding proposed Interconnection-wide regional Reliability Standards to the Commission.

24. While NERC relies on volunteer technical experts and stakeholders to develop proposed Reliability Standards under the facilitation of NERC's professional staff, NERC as the ERO is ultimately responsible for both the process and content of Reliability Standards proposed for Commission approval.

25. Thus, the Commission expects that NERC should have or acquire the necessary high level of internal technical expertise to further the development and improve the quality of proposed Reliability Standards.²⁰ Utilization of industry technical expertise does not discharge the ERO of its obligation to ensure Reliability Standards are developed that are responsive to the Commission's orders and provide for reliable operation of the Bulk-Power System. NERC anticipates over 35 Reliability Standards development projects and needs to be technically fluent about all of these projects to ensure that the development of the standards and NERC's subsequent approval or remand are based on its own technical expertise in addition to that of the industry's used to help draft the standards. Accordingly, the Commission directs NERC to reassess its allocation of FTEs and other resources, such as consultants, budgeted in 2009 for the Reliability Standards program, to provide an explanation in its compliance filing and, if appropriate, to request supplemental funding to support this program.

26. **Compliance Monitoring and Enforcement.** In Order No. 672, the Commission stated its expectation for the ERO to have a compliance program that incorporates proactive enforcement audits and investigations of alleged violations.²¹ This program is to provide for "rigorous" audits of compliance with the Reliability Standards.²² The Commission is concerned that NERC may not be able to adequately perform its compliance and enforcement duties with the proposed 2009 staffing. NERC proposes to add five FTEs to the compliance and enforcement functions, for a total of 31 FTEs. Of these, three FTEs appear to mainly perform tracking functions, rather than auditing or investigating potential violations or approving Notices of Penalty and mitigation plans.

²⁰ See Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 175; ERO Certification Order, 116 FERC ¶ 61,062 at P 234; NERC 2009 Business Plan and Budget at 8.

²¹ Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 45.

²² *Id.* P 463 (citing 18 C.F.R. § 39.7(a)).

27. Of primary concern is NERC's ability to substantively review and process alleged violations. Since June 18, 2007, NERC has identified more than 1,400 alleged violations. However, to date, NERC has processed (and filed for Commission approval of) 37 Notices of Penalty addressing only 105 alleged violations. Moreover, NERC has not completed its review of many of the approximately 5,000 alleged pre-June 18, 2008 violations and accompanying mitigation plans that require ERO/Regional Entity approval and monitoring. It is also unclear whether NERC has budgeted sufficient FTEs to ensure consistency across regions with respect to how entities must demonstrate compliance with the Reliability Standards and how differing interpretations of Reliability Standards during audits will be resolved.

28. NERC reports that 12 compliance violation investigations (CVI) have been initiated (four by NERC and eight by the Regional Entities), but none has been completed. CVIs and related event analyses are critically important to ensure reliability of the Bulk-Power System, because events or disturbances are often symptomatic of underlying reliability issues that require remediation. The Commission is concerned that NERC will not have enough staff to complete all event analyses and compliance violation investigations fully and in a timely manner. Accordingly, NERC must address in a compliance filing the adequacy of its 2009 budget for compliance monitoring and enforcement, and for CVI, including a meaningful plan and schedule for processing outstanding alleged violations, mitigation plans, notices of penalty, CVI, and a supplemental budget request if appropriate.

29. **Reliability Readiness Evaluation and Improvement Program.** NERC currently has a Reliability Readiness Evaluation and Improvement Program that identifies entities with primary reliability responsibilities and provides guidance to help those entities achieve operational excellence. NERC uses the results of the reliability readiness reviews to improve reliability performance of these entities and achieve excellence in their assigned reliability functions and responsibilities.²³ NERC states that it plans to phase out the Reliability Readiness Evaluation and Improvement Program and proposes to cease funding for the program after the first quarter of 2009, eliminating 8.5 FTEs. NERC justifies the elimination of the program as follows:

- (1) the value of the program is diminishing;
- (2) NERC's focus and resources should be squarely on Reliability Standards and compliance; and
- (3) NERC's role in enforcement of mandatory Reliability Standards may create a conflicted environment for this program, suggesting that its

²³ ERO Certification Order, 116 FERC ¶ 61,062 at P 320.

functions could be better undertaken by others (such as the Transmission Owners and Operators Forum).[²⁴]

NERC's business plan indicates that NERC had originally proposed to maintain the Reliability Readiness Evaluation and Improvement Program but industry comments on a publicly posted draft 2009 business plan persuaded NERC to eliminate the program.²⁵

30. In its advice to the Commission, WIRAB states that the decision to phase out the reliability readiness evaluations may be appropriate. However, WIRAB points out that the Transmission Owners and Operators Forum consists primarily of large transmission owners and operators and would not serve the needs of all of the Registered Entities. Further, WIRAB advises that the Forum's restrictive confidentiality requirements limit its ability to effectively transfer information more broadly.

31. NERC does not elaborate on its claim regarding the diminishing value of the reliability readiness program and has not adequately explained its reasons for eliminating the program. The Commission notes that the reliability readiness program was initiated as a direct response to the August 2003 blackout, with the goal to increase transparency of operating practices and assess the industry's preparedness to minimize the likelihood of another major blackout. The Commission believes that the ongoing vigilance provided by the Reliability Readiness Evaluation and Improvement Program serves an important function in ensuring Bulk-Power System reliability. Further, NERC itself recognizes that "[n]early all entities evaluated between March 2007 and April 2008 (98 percent of respondents to post-evaluation questionnaires) reported that on-site evaluations were beneficial to their organization."²⁶ NERC reports that reliability readiness evaluations have resulted in 3,200 recommendations that have been or currently are being implemented by the subjects of the evaluations.

32. While the development and enforcement of mandatory Reliability Standards are fundamental functions of the ERO and Regional Entities, these functions do not necessarily conflict with the Reliability Readiness Evaluation and Improvement Program. Consistent with Order No. 672, NERC has previously identified the program as a statutory activity under section 215 of the FPA and the Commission has accepted that characterization.²⁷ The Commission believes that it is inappropriate for the ERO to

²⁴ NERC Transmittal Letter at 31.

²⁵ NERC Application, Attachment 2 at 23.

²⁶ NERC Transmittal Letter at 24.

²⁷ See 2007 Budget Order, 117 FERC ¶ 61,091 at P 20-28.

discontinue a program established to fulfill a statutory function with the expectation that a privately funded group that is not accountable under section 215, such as the Transmission Owners and Operators Forum, may conduct some form of reliability readiness evaluations in the future.²⁸ We believe that, in the first instance, the ERO and Regional Entities are best equipped to conduct the reliability readiness evaluations; the Commission understands such evaluations to be an essential part of the ERO's package of responsibilities under section 215 of the FPA.

33. Further, we do not find compelling NERC's argument that continued performance of the reliability readiness evaluations poses a conflict with NERC's enforcement role. NERC has not sufficiently supported this allegation.

34. Accordingly, the Commission directs NERC to reconsider the funding for the Reliability Readiness Evaluation and Improvement Program, to provide additional explanation in a compliance filing about the proposed elimination of this program and, if appropriate, to provide a supplemental budget request for the continued funding of the program beyond the first quarter of 2009. Moreover, this compliance filing should address the affect of the proposed elimination on section 700 of its Rules of Procedure that implement this program.

35. **Reliability Assessment and Performance Analysis Program.** As part of the Reliability Assessment and Performance Analysis program, NERC states that it prepares three seasonal reliability assessments each year, as well as other special reliability assessment reports as conditions warrant or as directed by the NERC board of trustees. NERC proposes that funding for the Reliability Assessment and Performance Analysis

²⁸ The Commission addresses in the context of the current filing NERC's proposal to phase out funding of the Reliability Readiness Evaluation and Improvement Program. The Commission notes that in the ERO Certification Order the Commission accepted NERC's Reliability Readiness Evaluation and Improvement Program, as well as section 700 of NERC's Rules of Procedure that implement the program, as part of NERC's application for certification as the ERO. *See* ERO Certification Order, 116 FERC ¶ 61,062 at P 319-38. Pursuant to section 39.10 of the Commission's regulations, 18 C.F.R. § 39.10 (2008) (Changes to an Electric Reliability Organization Rule or Regional Entity Rule), the ERO must file with the Commission for approval any proposed rule or rule change. Accordingly, the ERO may not unilaterally eliminate a Commission-approved program such as the Reliability Readiness Evaluation and Improvement Program or eliminate (or intentionally lay dormant) section 700 of the NERC Rules of Procedure. Rather, to be in compliance with the Commission's regulations and relevant orders, the ERO must petition the Commission and gain Commission approval before eliminating the program or amending the Rules of Procedure.

Program will increase 53 percent from \$4,254,186 for 11 FTEs in 2008, to \$6,519,959 for 13.5 FTEs in 2009.

36. In its advice to the Commission, WIRAB states that the western states and provinces would be more willing to rely on the conclusions of the NERC long-term reliability assessment if NERC's findings were subject to a public review process.

37. The Commission expects NERC to be proactive when gathering and assessing data. Currently, data is provided by entities to the appropriate Regional Entity and then forwarded by the Regional Entity to NERC where the information for each region is validated by members of other regions. The Commission is concerned that this current practice does not constitute a sufficient method of validating another region's data. Potentially invalid data poses a potential risk for reducing the accuracy of the conclusions drawn from the data and thus rendering the steps taken to protect the grid less successful. Thus, the Commission is concerned whether NERC's Reliability Assessment and Performance Analysis Program is adequately funded and staffed to properly validate data, rather than passively accepting data received from other entities. Accordingly, the Commission directs NERC to reconsider the funding for the Reliability Assessment and Performance Analysis Program, to provide an explanation in a compliance filing and, if appropriate, to provide a supplemental budget request for additional funding of the program. In response to WIRAB's suggestion that NERC's findings for the long-term reliability assessment become subject to a public review process, the Commission finds that that topic is beyond the scope of this order and encourages NERC to work with WIRAB to resolve this issue.

C. Regional Entity Business Plans and Budgets

1. Conditional Acceptance

a. NERC Filing

38. NERC's Application contains a proposed 2009 business plan and budget for each Regional Entity. NERC explains that it provided guidance to each Regional Entity on the expected scope and content of the regional budget submissions. NERC's finance and accounting staff reviewed the submitted budgets, as did the Finance and Audit Committee of NERC's board of trustees. NERC states that its review focused on verifying that each Regional Entity's business plan and budget provided sufficient resources to adequately carry out the functions that NERC has delegated to the Regional Entity, as well as understanding the bases for any significant differences in the amounts budgeted by different Regional Entities for the same function. NERC states that, as a result of its review processes, it has been able to conclude that each Regional Entity's 2009 business plan and budget provides for necessary and adequate resources to carry out the Regional Entity's delegated functions. NERC notes that every Regional Entity has

budgeted increased resources for its Compliance Monitoring and Enforcement Program (CMEP) and Organization Registration and Certification Program.

b. Comments and Advice

39. WECC comments that it supports the proposed 2009 business plan and budget relating to WECC. WIRAB advises that the Commission approve the WECC proposed budget. In general, WIRAB expresses concern about Regional Entities responding to new challenges in implementing compliance programs and urges Commission flexibility to accommodate possible future adjustments to the budgets.

c. Commission Determination

40. The Commission conditionally accepts the Regional Entity business plans and budgets. In reviewing each Regional Entity budget, the Commission determined that each submission reasonably supports the levels of expenditures identified in the budget. The Commission is satisfied that the Regional Entities have focused on adequately staffing their compliance and enforcement programs. With the exception of the proposed phase-out of the regional Reliability Readiness Evaluation and Improvement Programs (discussed above), the Application indicates that the Regional Entities are adequately funded to perform the delegated, statutory functions. In addition, as discussed below, the Commission has several concerns regarding the Regional Entity business plans and budgets and directs NERC to submit a compliance filing within 60 days of the date of this order addressing these concerns.

41. In response to WIRAB, the Commission notes that section 39.4(d) of the Commission's regulations allows the ERO or a Regional Entity to request authorization to collect a "special assessment" upon demonstration of "unforeseen and extraordinary circumstances."²⁹

2. General Issues

a. Consistency Among Regional Entity Business Plans and Budgets

42. In the 2007 and 2008 Budget Orders, the Commission expressed concern about the need for consistency among Regional Entity business plans and budgets. The Commission directed NERC to provide the Regional Entities with better designations, descriptions and criteria of statutory activities for the 2009 budget.³⁰ Similarly, the

²⁹ 18 C.F.R. § 39.4(d) (2008).

³⁰ 2007 Budget Order, 117 FERC ¶ 61,091 at P 39.

Commission directed NERC to provide further consistency and standardization in the formatting of the Regional Entity budgets for 2009.³¹ Further, the Commission stated that differences between Regional Entity business plans should be minimized, and those differences that remain should be justified.³²

i. NERC Filing

43. NERC states that it and the Regional Entities have worked diligently to achieve consistency in the content and presentation of the Regional Entity budgets. NERC developed templates for the Regional Entity business plans and schedules that comprise the regional budgets. NERC explains that these templates follow the same format that NERC uses for its business plan and budget. NERC's Chief Financial Officer worked with each Regional Entity to discuss the templates and the 2009 budget process. NERC maintains that, as a result of this effort, the business plan and budget for each Regional Entity follows the same format, is organized in the same way, and provides the same items of information.

44. Further, NERC has included an enhanced series of metrics that provide detailed information about how each Regional Entity is organized, how it does its business, and the relative sizes of the organizations and the amount of work they have to do.³³ The 2009 Business Plan's metrics have been revised to incorporate the additional metrics requested by the Commission in the 2008 Budget Order.

45. In its advice to the Commission, WIRAB recommends that the Commission direct NERC to continue to develop regional performance metrics and that in the 2010 budget NERC be required to present more informative workload metrics. In addition, WIRAB recommends that the Commission direct NERC and WECC to begin to link workload metrics to measurements of improvement in reliability.

ii. Commission Determination

46. NERC and the Regional Entities have made significant progress in promoting consistency among the Regional Entity business plans and budgets. NERC's development of a common template for all Regional Entities makes it easier to understand the information provided and to compare this information and understand the

³¹ *Id.* P 84.

³² *Id.* P 69.

³³ *See* NERC Application, Attachments 14 & 15.

bases for any significant differences in amounts budgeted by different Regional Entities for the same function.

47. The Commission appreciates NERC's improvements to the metrics pursuant to the 2008 Budget Order. While the metrics provide a valuable tool for benchmarking and comparing Regional Entity budgets, there are two specific matters that need further refinement. First, the metrics lack a uniform description regarding the types of audits which the Regional Entities perform. Specifically, it is not clear among the Regional Entities what constitutes a "large audit," "medium audit," "small audit," "tabletop audit," "offsite audit," or "other audit." It appears that these terms are used interchangeably among the Regional Entities and that the terms may mean different things to different entities. This lack of uniformity limits the usefulness of the data. The Commission, therefore, directs NERC to include in its compliance filing (1) standardized terminology regarding the different types of audits, and (2) revised audit-related metrics applying the standardized terminology.

48. In the 2007 Budget Order, the Commission directed NERC to not only improve the metrics but conduct an analysis of the metrics and include in its business plan and budget a discussion of significant inconsistencies or other issues revealed by such analysis.³⁴ Attachment 15 of NERC's 2009 Application includes a limited analysis based on the metrics, but does not draw conclusions or make recommendations as a result of that analysis. The Commission expects NERC to improve upon this analysis in future budget filings.

49. Finally, the Commission agrees with WIRAB that NERC needs to continue to develop regional performance metrics and encourages NERC to pursue linking workload metrics to measurements of improvement in reliability for the 2010 budgets.

b. Indirect Costs

i. NERC Filing

50. NERC explains that indirect expenses are the amount of Administrative Services expenditures that have been allocated to each of the statutory programs on the basis of numbers of FTEs in each program. The Application identifies the following indirect costs for 2009:

- FRCC's indirect cost allocation is \$588,493, a 59 percent decrease from the 2008 and 14 percent of FRCC's total 2009 budget.

³⁴ See 2007 Budget Order, 119 FERC ¶ 61,059 at P 35.

- MRO's indirect cost allocation is \$2,568,773, a three percent decrease from 2008 and 40 percent of MRO's total 2009 budget.
- NPCC's indirect cost allocation is \$5,138,159, a 68 percent increase over 2008 and 51 percent of NPCC's total 2009 budget.
- RFC's indirect cost allocation is \$4,316,301, a 17 percent increase over 2008 and 38 percent of RFC's total 2009 budget.
- SERC's indirect cost allocation is \$2,786,025, an 11 percent increase over 2008 and 28 percent of SERC's total 2009 budget.
- SPP Regional Entity's indirect cost allocation is \$1,162,919, a 51 percent decrease from 2008 and 16 percent of its total 2009 budget.
- TRE's indirect cost allocation is \$3,660,875, a 160 percent increase over 2008 and 59 percent of TRE's total 2009 budget.
- WECC's indirect cost allocation is \$14,049,338, a 21 percent increase over 2008 and 36 percent of WECC's total 2009 budget.

ii. Commission Determination

51. Due to the notable rise in total projected administrative costs for the 2009 budget, the Commission analyzed the indirect costs associated with each of the Regional Entity program areas. First, the Commission observed inconsistencies regarding the analysis of indirect costs.³⁵ Indirect costs constitute a significant portion of the proposed budgets. However, there appears to be no uniformity regarding the Regional Entities' determination of the scope of the term "indirect costs." Thus, the usefulness of the data regarding indirect costs is significantly limited, hindering both transparency and accountability. The Commission, therefore, directs NERC to include as part of the 2010 Business Plan and Budget a definition of the term "indirect costs" that shall be applied consistently by NERC and each Regional Entity.

52. While in previous years the Commission has been accommodating to Regional Entities regarding indirect costs, it was anticipated that Regional Entities would begin to shore up and eventually reduce the amount of administrative costs associated with their

³⁵ See NERC Application, Attachment 15 (Analysis of Indirect Expenses as Percentages of Total Statutory Budgeted Expenses, Direct Program Costs Per FTE, and Compliance Program Costs Per Registered Entity in the NERC and Regional Entity 2009 Budgets).

operations. With the exception of a few cases, the above data, however, shows a continued and substantial increase in the General and Administrative indirect costs for five of the Regional Entities.

53. The 2009 Business Plans and Budgets do not provide adequate support for the increase to General and Administrative expenses for a number of the Regional Entities. Accordingly, the Commission directs that NERC provide a more detailed explanation of its General and Administrative expenses for NPCC, RFC, TRE, SPP Regional Entity, and WECC. General and Administrative expenses on average have increased nearly 47 percent over last year's budget. These large increases are not traced back to any relevant economic factors nor are they supported by general assertions of increases in salary or benefits. Therefore, the Commission directs that NERC, in its compliance filing, provide additional information to justify the cost increases. The Commission expects that the filing will contain detailed information that is sufficient to justify the large cost increases.

3. Regional Entity Specific Concerns

a. FRCC Non-Statutory Activities

54. FRCC's business plan and budget indicate FRCC's non-statutory activities have increased from 39.5 to 45.7 percent of its total budget from 2008 to 2009. Order No. 672 does not prohibit a Regional Entity from performing non-statutory activities that are reliability-related, provided that they do not conflict with the performance of a delegated function, which is the primary function of a Regional Entity.³⁶ FRCC's non-statutory activities approach half of the total budget for its activities. In a compliance filing, NERC and FRCC are directed to provide an explanation for the increase in non-statutory activities as a percentage of FRCC's total budget, and whether FRCC expects that percentage to continue to increase in future years.

b. SPP Regional Entity Working Capital Reserve and Shared Costs

55. The Commission notes that SPP Regional Entity has not listed any working capital reserve for 2009. SPP Regional Entity states that it does not need to establish a working capital reserve, because it has access to operating cash balances and bank line of credit for short-term funding needs. The Commission directs NERC and SPP Regional Entity to provide additional information on the operating cash balances. Further, NERC and SPP Regional Entity must clarify whether the operating cash balances and bank line of

³⁶ Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 656.

credit are solely under SPP Regional Entity's name and are not shared in any way with Southwest Power Pool, Inc. (SPP Inc.).³⁷

56. Further, SPP Regional Entity proposes to continue to use shared staff from SPP Inc. to provide General and Administrative support for the SPP Regional Entity programs in its 2009 budget.³⁸ SPP Regional Entity proposes to use a standard rate of \$101 per hour for shared services for budgeting purposes. In a March 2008 order, the Commission directed that SPP Regional Entity, in future annual business plan and budget filings, include specific information regarding the actual hours shared employees work on SPP Regional Entity business and their actual per hour rate.³⁹ Each shared employee is expected to record on a daily basis the hours worked on Regional Entity business. If the actual cost for shared employees differs from the standard hourly rate, the cost must be trueed-up. In addition, the Commission directed that SPP Regional Entity must provide detailed definitions of each indirect cost allocation function, which clearly set forth what the function is and how it supports the Regional Entity.

57. As previously determined in the 2008 Compliance Order,⁴⁰ the Commission approved SPP Regional Entity's use of the \$110 per hour rate for shared employees, subject to NERC submitting SPP Regional Entity's detailed analysis of its actual costs in its April 2009 true-up filing. In addition, the Commission directed that in future annual business plan and budget filings, SPP Regional Entity must include specific information regarding the proposed hours shared employees will work on SPP Regional Entity business and its actual per hour rate for each indirect cost allocation for shared services. SPP Regional Entity, however, has not provided the above required information in the 2009 Business Plan and Budget regarding its proposed \$101 per hour rate for shared employees. Therefore, SPP Regional Entity's hourly rate is conditionally accepted subject to NERC and SPP Regional Entity providing the required information in the compliance filing. In addition, NERC and SPP Regional Entity are directed to file as part of the next April true-up filing the detailed accounting of actual employee costs along with specific information regarding the actual hours shared employees work on SPP Regional Entity business, their actual per hour rate, and documentation demonstrating that a Regional Entity employee approved the assignment of work before it began and authorized the work before it was paid.

³⁷ See Delegation Agreement Order, 119 FERC ¶ 61,060 at P 428 (requiring SPP Regional Entity to demonstrate how funding of non-statutory activities would be kept separate from funding of statutory activities).

³⁸ NERC Application, SPP 2009 Business Plan and Budget at 6.

³⁹ 2008 Compliance Order, 122 FERC ¶ 61,246 at P 14.

⁴⁰ *Id.*

58. We observe that the issues addressed above touch upon transactions and relationships between SPP Regional Entity and SPP Inc. These issues may relate to an ongoing staff audit in Docket No. PA08-2-000 into, among other topics, SPP Regional Entity's organizational structure and practices. As a result, our acceptance of SPP Regional Entity's 2009 Budget and Business Plan is also conditioned upon the outcome of the audit in Docket No. PA08-2-000.

c. Interest Income

59. The Commission notes that FRCC, MRO, NPCC, SPP, and TRE have not listed any interest income for 2009. The Commission would expect that each Regional Entity would have some amount of interest income and that it should be properly accounted for in the Regional Entity's annual budget. Therefore, NERC and the above Regional Entities are directed to explain in the compliance filing why no such interest income is expected or correct the budgets to include interest income.

d. Salary Increases

60. In its review of the Regional Entity budgets, the Commission generally observed a substantial increase in salary per FTE, in some instances reflecting increases of 70, 95, and 283 percent for certain programs.⁴¹ Under NERC's system of accounts, salary costs consist of direct salaries, allocated salaries and benefits, employments agency fees, and temporary office services. NERC's Application does not provide sufficient information to ascertain whether the significant proposed salary increases reflect the first-time inclusion of other such legitimate items. Accordingly, the Commission directs NERC and the Regional Entities to provide additional information explaining the proposed salary increases.

e. WIRAB

61. The WECC funding request includes a budget for WIRAB, a Commission-approved regional advisory body.⁴² WIRAB has proposed a 2009 Budget of \$595,810 consisting of \$378,272 in assessments, \$2,976 in expected interest, and \$214,562 in unspent funds from 2008. The United States portion of the assessment is 84.9 percent or \$321,153. WIRAB has requested an increase for indirect expenses, from \$154,647 to \$240,210, which represents a 55 percent increase over its 2008 request. The 2009 Budget also contains a newly implemented cash reserve of \$100,000.

⁴¹ For example, the General and Administrative salary increase per FTE for WECC averaged 70 percent, for SERC 95 percent, and for TRE 283 percent.

⁴² WIRAB Order, 116 FERC ¶ 61,061 at P 33-37.

62. The Commission conditionally approves the requested funding for WIRAB. NERC and WIRAB are directed to provide additional information explaining the increase in WIRAB's budget (including the 55 percent increase for associated indirect expenses) when it expects to have \$214,562 in unspent funds at the end of 2008. The Commission recognizes that its relationship with WIRAB is different than its relationships with the ERO and the Regional Entities. However, WIRAB is funded under section 215 of the FPA and, therefore, we believe that it is our responsibility to ensure that WIRAB funds are appropriately spent on section 215 activities. Accordingly, in the compliance filing the Commission directs that NERC and WIRAB provide additional information to justify the increases.

f. Revised Record Retention Policy

63. In the 2009 Application, NERC submits MRO's and NPCC's revised records retention policies. NERC states that these regional policies conform to NERC's revised records retention policy and Commission directives.

64. We agree that MRO's and NPCC's modified document retention policies conform to NERC's revised record retention policy. Accordingly, we accept MRO's and NPCC's revised records retention policy.

D. Cost Allocation

1. NERC Filing

65. NERC states that funding among end users will continue to be allocated in each country based on Net Energy for Load. One exception to this method of collection would apply to the allocation of certain compliance and enforcement costs for jurisdictions outside the United States where a provincial government has designated an entity other than a Regional Entity to perform compliance and enforcement activities.⁴³ Specifically, there are now two programs, one for the Ontario Independent Electric System Operator (IESO) and one for the Province of Québec. NERC states that the adjustments to the NPCC allocations for IESO and Québec are based on an alternate allocation that charges the Québec province based upon an audit-based allocation methodology. As a result, certain costs of NERC's and NPCC's compliance programs are excluded from the IESO and Québec assessments. According to NERC, "the excluded costs are allocated to the remaining entities using . . . the audit-based allocation methodology for NPCC," i.e.,

⁴³ See NERC Application, Attachment 16 (NERC's Expanded Policy on Allocation of Certain Compliance and Enforcement Costs; Proposed Adjustment to the IESO 2009 NERC Assessment; and Proposed Adjustment to the Québec 2009 NERC Assessment).

NPCC costs are allocated among the remaining balancing areas within NPCC based on an audit-based methodology.⁴⁴

2. Commission Determination

66. In the ERO Certification Order, the Commission approved NERC's proposed allocation of costs based on Net Energy for Load as providing a fair and reasonable means for allocating costs.⁴⁵ In the 2008 Compliance Order, the Commission conditionally approved NERC's proposed revision to accommodate possible international concerns on cost allocation.⁴⁶ However, in that order, the Commission did not approve a change in methodology to apply within the United States.

67. NERC's filing is not clear regarding how it plans to apply an audit-based methodology to allocate "excluded" costs among the U.S. balancing authorities within NPCC. In particular, the filing does not explain whether this results in a deviation from the approved Net Energy for Load methodology. If that is in fact the intent, NERC and NPCC have not provided an explanation or justification for the deviation from the approved allocation methodology. Accordingly, the Commission directs NERC and NPCC to submit in the compliance filing an additional explanation of how the balance of the costs for the NPCC compliance and enforcement, i.e., the excluded costs from the IESO and Québec assessments, will be allocated to entities within the United States. Further, any proposed deviation from the approved Net Energy for Load methodology must be justified. Finally, the Commission will defer consideration of NERC's proposed "Expanded Policy on Allocation of Certain Compliance and Enforcement Costs" until the review of NERC's and NPCC's compliance filing.

E. Status Report on Reliability Enhancement Programs (Docket No. RR07-14-001)

1. NERC Filing

68. Order No. 672 required the ERO to make a compliance filing no later than one year from the date of its certification proposing reliability enhancement programs that would improve Bulk-Power System reliability, along with a program implementation

⁴⁴ NERC Transmittal Letter at 66.

⁴⁵ ERO Certification Order, 116 FERC ¶ 61,062 at P 167; *see also* Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 213.

⁴⁶ 2008 Compliance Order, 122 FERC ¶ 61,246 at P 24-25.

schedule.⁴⁷ The Commission stated its belief that the performance-oriented, results-driven aspects of programs such as the Nuclear Regulatory Commission's Action Matrix and nuclear power plant assessment program, along with the Institute of Nuclear Power Operations (INPO) reliability-related programs would serve as useful models for the ERO in the electric industry. The Commission emphasized its interest in the evolution of "best practices" in the electric industry.

69. In a June 20, 2007 compliance filing, NERC identified activities that it believed contributed to the evolution of best practices, but stated that, given the start-up and transition of becoming the ERO, it was not then in a position to propose the design and implementation of a full array of specific reliability enhancement programs. The filing was accepted in a letter order subject to NERC filing a further report in one year. On June 21, 2008, NERC submitted a second compliance filing, again stating that it is not in a position during this period of ERO start up and transition to propose the designing and implementation of a full array of enhancement programs.

70. NERC's June 2008 compliance filing includes a description of its efforts to enhance reliability metrics and benchmarking and explains the values of metrics to track the success of various initiatives and develop indicators and root causes of unreliable system performance.⁴⁸ NERC describes its plans to develop three major indices as reliability performance metrics: (1) "reliability performance gap," to measure how far the system is from expected performance under dynamic conditions; (2) "adequacy gap," to measure capacity and energy shortages from expected adequacy levels under steady state conditions; and (3) "violation index," to measure the reliability improvement from compliance with Reliability Standards.

2. Commission Determination

71. The Commission understands that many aspects of the implementation of the Energy Policy Act of 2005⁴⁹ are still in a state of evolution and that, because of this, the ability of NERC to make a meaningful enhancement filing may be somewhat compromised. Nonetheless, the Commission emphasizes that the development and promotion of "best practices" programs is an ongoing role of the ERO. Given NERC's and the Regional Entities' obligations to address the new enforcement activities, new

⁴⁷ Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 468.

⁴⁸ The term "metrics" commonly refers to a system of parameters of ways of quantitative and periodic assessment of a process that is to be measured.

⁴⁹ *Energy Policy Act of 2005*, Pub. L. No. 109-58, §§ 1261 *et seq.*, 119 Stat. 594 (2005).

cybersecurity Reliability Standards, and ongoing questions on the adequacy of resources, the Commission acknowledges that during 2008 NERC and the Regional Entities may still be in the transition phase of their development. Therefore, the Commission accepts NERC's 2008 enhancement filing and directs NERC to include in its 2010 Business Plan and Budget a further update of the enhancement programs. The information provided in the next business plan and budget must demonstrate more thoroughly developed reliability enhancement programs and sufficient funding to support such programs. The business plan and budget must also include a schedule or action plan that shows the staged development of the enhancement programs with specific, measurable timing and goals.

72. The Commission believes that NERC's development of grid reliability performance metrics is an important and timely topic to support Bulk-Power System reliability.⁵⁰ Improved reliability performance metrics will increase both operator and regulatory understanding of the condition of the Bulk-Power System. Proactive measurement tools and strategies can detect reliability problems in real-time, and resolve occurrences or prevent further vulnerability. The Commission, therefore, encourages NERC to provide the necessary resources to timely develop metrics and benchmarks to support Bulk-Power System reliability. Further, the Commission directs NERC to provide in a compliance filing a detailed description of NERC's goals and plans to achieve those goals for fiscal year 2009 with regard to real-time performance metrics.

73. To that effect, we note that NERC's 2009 Business Plan and Budget omit the following benchmarking objectives that were included in previous year business plans and budgets:⁵¹ (1) incorporate the results of the latest reliability threats survey into the Reliability Dashboard;⁵² (2) report on changes in reliability performance compared to established benchmarks for each reliability performance indicator; (3) develop and submit standards authorization requests, as required, for any deficiencies or needs

⁵⁰ In Order No. 672, the Commission stated that it "may determine that reliability and adequacy assessments should include appropriate metrics, if applicable, to assist the Commission in monitoring actual reliability performance and plans." Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 805.

⁵¹ See NERC 2008 Business Plan and Budget, Docket No. RR07-16-000, Attachment 4 at 20-21 (filed Aug. 24, 2007).

⁵² Section 809 of NERC's Rules of Procedure requires NERC to maintain a performance metrics "dashboard" on its website which identifies and tracks key reliability indicators as a means of benchmarking reliability performance and measuring reliability improvements. NERC's current benchmarking dashboard includes sections on Reliability Performance Gap Index, Adequacy Gap Index, and Leading Indicators.

revealed by the benchmarking program; (4) maintain a Generating Availability Data System (i.e., GADS) on the performance of electric generating equipment; (5) communicate performance results, trends, recommendations, and initiatives to those responsible to take actions; follow with confirmation of actions to correct any deficiencies identified; and (6) establish and maintain a Transmission Availability Data System (i.e., TADS) and report on trends in transmission equipment performance. The Commission directs the ERO to explain in the compliance filing why the above benchmarking objectives have been omitted.

The Commission orders:

(A) NERC's 2009 Business Plan and Budget are hereby conditionally accepted, as discussed in the body of this order.

(B) The Regional Entity 2009 Business Plans and Budgets are hereby conditionally accepted, as discussed in the body of this order.

(C) The WIRAB budget is hereby approved for funding, as discussed in the body of this order.

(D) NERC is hereby directed to submit a compliance filing within 60 days of the date of this order, as discussed in the body of this order.

(E) NERC is hereby directed to submit a separate compliance filing on or before April 1, 2010, containing a true-up of actual 2009 costs, as discussed in the body of this order.

(F) NERC's July 21, 2008 compliance filing is hereby accepted, and NERC is directed to submit an update of its enhancement programs as part of its 2010 Business Plan and Budget filing, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.